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August 11, 1997

RECEIVED

AUG 11 1997

William Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Written Ex Parte Communication: Administration of the North
American Numbering Plan, CC 92-237**

Dear Mr. Caton:

Attached please find a courtesy copy of TCG Colorado's Comments ("TCG's") on the Jeopardy Allocation Plan as proposed by Jack Ott, Colorado's Numbering Plan Administrator. TCG believes this jeopardy declaration was made in advance of a potential Colorado Commission decision to adopt an overlay for the 303 NPA because the Administrator lacks a plan to meet the FCC's requirement to assign at least one NXX code to all new service providers within the existing NPA.

TCG is opposing this jeopardy declaration at the State Commission because it is premature and will hinder the development of competition in the State of Colorado. Such ad hoc and premature declarations of jeopardy by current Code Administrators are unacceptable and reinforce the need for the Commission to expeditiously choose a neutral, third-party administrator for the North American Numbering Plan.

Pursuant to Sec. 1.1206(b)(1) of the Commission's rules, attached please find an original and two copies of this letter.

Sincerely,

Judith E. Herrman
Manager, Federal Regulatory Affairs

Attachment

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cc: Regina Keeney
Kathleen Levitz
Gerladine Matisse
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Heather Gold
Ron Conners
Jeannie Grimes

BEFORE THE PUBLIC UTILITIES COMMISSION OF COLORADO

IN THE MATTER OF THE APPLICATION)	
OF THE NUMBERING PLAN)	
ADMINISTRATOR FOR APPROVAL OF A)	DOCKET NO. 97A-288T
JEOPARDY ALLOCATION PLAN ON)	
LESS THAN STATUTORY NOTICE.)	

**TCG COLORADO COMMENTS ON NUMBER PLAN
ADMINISTRATOR JEOPARDY ALLOCATION PLAN**

TCG Colorado ("TCG") hereby submits its brief commenting on the Jeopardy Allocation Plan as proposed by Jack Ott, Numbering Plan Administrator. TCG, along with Sprint Communications Company L.P. and ICG Telecom Group, Inc., filed a "Reply To The Statement of Position of the Numbering Plan Administrator" in Docket No. 97A-103T on July 17. It was TCG's position at that time that the only reason the Numbering Administrator had declared a jeopardy condition was a potential Commission decision adopting an overlay as the preferred relief plan for the 303 NPA and the Administrator's lack of a plan to meet the FCC's requirement to assign at least one code to all new service providers within the 303 NPA. TCG continues to believe that the overlay was the only reason for the Code Administrator's declaration of jeopardy in the 303 NPA, but that a jeopardy condition does not exist at this time.

I. Jeopardy Conditions Do Not Exist

A jeopardy condition exists, according to the Central Office Code Guidelines, only "when the forecasted and/or actual demand for NXX resources will exceed the known supply during the planning/implementation interval for relief." The Industry Numbering Committee (INC)

document goes on to explain that "Accordingly, pending exhaust of NXX resources within an NPA does not represent a jeopardy condition if NPA relief has been or can be planned and the additional NXXs associated with the NPA will satisfy the need for new NXX codes."¹ [emphasis added] Given the information that the Code Administrator has provided the Commission and the parties to date, those conditions do not exist in the 303 NPA.

To the contrary, the Code Administrator testified repeatedly in Docket No. 97A-103T that there would be codes remaining at the time of relief.² Specifically, Mr. Ott testified on June 30, 1997 that not only would there be NXX codes remaining at the time of relief, but that he estimated there would be approximately 30 or 40 codes remaining.³ In fact, this Commission's decision adopting the overlay was based on its belief that Mr. Ott's representation was credible.⁴ Therefore, absent any new information, there is no basis for a declaration of jeopardy since, according to Mr. Ott's own analysis, demand for new codes will not exceed the supply prior to implementation of relief.

Moreover, the Code Administrator does not rely on such a representation in the draft Jeopardy NPA Allocation Plan. Rather, he merely states that "Because of the current regulatory proceedings regarding area code relief and the lack of agreement among service providers and telephone customers as well, the Administrator has deemed it necessary to declare that a jeopardy

¹ INC 95-0407-008, reissued April 1997, p. 25.

² Final Recommendation of Numbering Plan Administrator, p. 4; Response to Staff Data Request No. 020; Transcript, Volume 1-A, at p. 162.

³ Transcript, Volume 1-A, at p. 162.

⁴ Decision No. C97-761, Docket No. 97A-103T, p. 16.

NPA situation now exists in the 303 NPA.”⁵ [footnote omitted] The ICCF has not recognized a lack of consensus among providers as a legitimate reason for declaring jeopardy. Further, if lack of consensus were an appropriate criteria, jeopardy situations would occur even more frequently.

Additionally, in responses to data requests from Commission Staff, the Code Administrator, then identifying himself as a Manager of Capacity Provisioning for US West, noted two possible causes of a jeopardy situation: 1) if a party filed a lawsuit against the Commission-adopted relief plan and thereby significantly delayed implementation of relief, and 2) if a Code Administrator used a linear forecast, rather than an exponential growth forecast for demand for codes.⁶ Neither of these circumstances are relevant today in Colorado. No party has filed a lawsuit against the overlay and Mr. Ott, in the same data response, explains that he used an exponential growth forecast in his demand projection. Mr. Ott also received numerous questions regarding his forecasting techniques in the workshops held in the investigatory docket, Docket No. 96I-534T. Mr. Ott indicated in those workshops that he had taken into consideration the increased code demands of the PCS and CLEC new entrants in his forecast. By all accounts, Mr. Ott had performed a reasonable forecast of demand for new codes and the industry accepted his projected exhaust date of second quarter 1998. For that reason, the industry and the Code Administrator urged this Commission to adopt a relief plan prior to August 1998 so that the relief could be implemented prior to exhaust and thereby avoid any need to declare a jeopardy condition.

There is simply no evidence that a jeopardy situation exists at this time. In fact, such a

⁵ Draft Jeopardy NPA Allocation Plan, p. 1.

⁶ Responses to Staff Data Requests No. 016 and 017.

conclusion would have to be based on the significantly different results of a new regression analysis by Mr. Ott between his last testimony in Docket 97A-103T on July 2 and July 8, the date of the jeopardy declaration. Mr. Ott makes no allegation that this analysis was done or that circumstances changed during the six days between the hearing and the jeopardy declaration.

Even if the only reason for declaring jeopardy is the need for the Code Administrator to reserve enough codes so as to meet the FCC's requirement for an overlay (as TCG presumes), there is no basis for declaring a jeopardy. As mentioned above, the Code Administrator estimated that there would be 30 to 40 codes left at the time of relief. In the draft Allocation Plan, he recommends reserving 24 codes to meet the FCC requirement. If 24 codes are needed to ensure that the FCC requirement is met, then the estimated 30 to 40 remaining at the end of relief should be more than sufficient.

Given the information that has been presented to this Commission and the parties throughout the 303 hearing and in the draft Jeopardy NPA Allocation Plan, TCG fails to find a sound basis for the declaration of a jeopardy condition and the immediate freeze on assignment of new codes. TCG therefore recommends that the Commission reject the Draft Jeopardy NPA Allocation Plan at this time and require the Code Administrator to provide documented support for a declaration of jeopardy, i.e., evidence that the forecasted demand for codes exceeds the supply of codes prior to implementation of relief on May 31, 1998, ordered by this Commission. The Code Administrator should also be required to provide an explanation of any changes in his forecast, and the basis for those changes, from the forecast he testified to in early July of this year.

TCG has serious concerns with an unsupported declaration of jeopardy and freeze on

code assignments. Jeopardy conditions and rationing of codes create serious business risks for new entrants who may be precluded from offering their services to potential customers. TCG and many other new entrants in California have had significant experience with lotteries and the impacts can be severe. A Code Administrator's power to declare jeopardy is an enormous responsibility and one that should be exercised with caution. In the California jeopardy situations, TCG has not challenged the Code Administrator's declaration because it has been accompanied by a showing that at the current rate of requests for new codes, there would not be enough codes available for assignment prior to the implementation date of a relief plan. In Colorado, the Code Administrator has made repeated representations that enough codes would be available throughout the planning and implementation period and yet still declared a jeopardy situation. At a minimum, the Code Administrator must be required to provide documented support for a jeopardy declaration, including an explanation of how his forecast could have changed so dramatically within one week.

II. Uncertain Implementation Date of Relief

The Commission stated in Decision No. C97-761 its hope to extend the implementation of the relief plan beyond the "original projection of May 31, 1998."⁷ While this is a worthy goal and one that the industry will also try to achieve, neither a jeopardy declaration nor rationing of codes should be used as a mechanism to extend the relief implementation date. While industry members differed on the best method of relief, there has always been consensus that area code relief was necessary. Although TCG vigorously opposes an overlay, it would prefer any kind of relief plan to rationing of codes.

⁷ Docket No. 97A-103T, p. 16.

III. The Rationing Plan

At this time, TCG has no particular objection to the rationing plan presented in the draft Jeopardy NPA Allocation Plan. The rationing plan would be acceptable if a jeopardy situation truly existed and codes needed to be rationed. TCG does not believe a jeopardy situation exists today and therefore recommends that the Commission reject the Code Administrator's Plan until such time as evidence of jeopardy can be shown.

IV. Conclusion

TCG believes that the Code Administrator has not presented evidence that a jeopardy condition exists and that the Commission should reject the Draft Jeopardy NPA Allocation Plan until such time as a jeopardy condition can be verified.

DATED this 8th day of August, 1997.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing TCG Comments on Number Plan Administrators Jeopardy Allocation Plan Docket No. 97A-288T was delivered by facsimile, and the original and 15 copies were deposited in Federal Express, pre-paid, this 8th day of August, 1997, to the following:

Bruce Smith, Director
Public Utilities Commission
1580 Logan Street, Office Level 2
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and that true and correct copies were deposited in the Federal Express or regular mail, postage prepaid, this 8th day of August 1997, addressed as follows:

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